STATE OF MICHIGAN

COURT OF APPEALS

In re EASTHAM, Minors.

UNPUBLISHED
December 16, 2014

Nos. 321144; 321145
Genesee Circuit Court
Family Division
LC No. 11-127706-NA

Before: RIORDAN, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother and father appeal as of right the trial court order terminating their parental rights to their two daughters pursuant to MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood child will be harmed). In addition to these grounds, the court found termination of respondent mother's parental rights also warranted under MCL 712A.19b(3)(c)(*ii*) (other conditions exist and failure to rectify) and (*l*) (previous termination). We affirm.

I. ADJUDICATION

Respondent mother contends that because she was never adjudicated, she is entitled to reversal pursuant to the Michigan Supreme Court's opinion in *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014), which struck down the one-parent doctrine.

This Court recently decided this issue in a published case, *In re S Kanjia, Minor*, __Mich App__; __NW2d__ (Docket No. 320055, issued October 21, 2014).[1] This Court found that "the general rule prohibiting a respondent from collaterally attacking a trial court adjudication on direct appeal from a termination order does not apply to cases where a respondent raises a *Sanders* challenge to the adjudication." *Id.* at __ (slip op at 6). However, this Court further held that "*Sanders* is to be given limited retroactivity; its holding applies only to cases then pending when *Sanders* was decided, where the issue was raised and preserved." *Id.* at __ (slip op at 8).

[1] "A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis." MCR 7.215(C)(2).

Thus, this Court ultimately held that "because respondent failed to raise and preserve the *Sanders* issue in the trial court, he is not entitled to relief on his *Sanders* challenge." *Id.*

Likewise in this case, respondent mother did not preserve a *Sanders* challenge based on her due process rights or challenge "the validity of the one-parent doctrine[.]" *In re S Kanjia, Minor*, __ Mich App at __ (slip op at 8). Because she did not preserve the *Sanders* issue in the trial court, respondent mother is not entitled to reversal pursuant to *In re S Kanjia, Minor*.[2]

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

Both respondents also challenge the trial court's statutory ground analysis. We review for clear error a trial court's finding that a statutory ground for termination was proven by clear and convincing evidence. *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). "A decision is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* at 17-18 (quotation marks and citation omitted).

B. RESPONDENT MOTHER

MCL 712A.19b(3)(*l*) provides for termination when "[t]he parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state."

It is undisputed that respondent mother's rights to a previous child were terminated in 2006. The infant tested positive for cocaine and marijuana at birth, and there were substantiated reports of physical neglect due to the conditions of the home and the lack of appropriate baby items. Now, eight years later, respondent mother attempts to claim this prior proceeding was invalid due to the subsequent development of caselaw. However, respondent did not pursue any type of appeal in the prior termination. It remains valid. Nor does respondent appear certain of what occurred in the prior termination, as she only argues in terms of what probably occurred. Further, under the plain language of MCL 712A.19b(3)(*l*), a trial court is justified in its statutory ground finding, without further inquiry, if a "parent's rights to another child were terminated" under the relevant statutory provisions. Because it is undisputed that respondent mother's rights to a previous child were terminated consistent with MCL 712A.19b(3)(*l*), we find no error in the trial court's analysis.

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[2] We note that in *In re K Farris, Minor*, __ Mich __; __ NW2d __ (Docket No. 147636, issued September 19, 2014), the Michigan Supreme Court granted leave to decide whether a *Sanders* challenge constitutes a collateral attack and "to the extent a collateral attack is permissible, whether the Court's decision in *Sanders* applies retroactively[.]" However, "a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals." MCR 7.215(C)(2).

Furthermore, because "[i]t is only necessary for the DHS to establish by clear and convincing evidence the existence of one statutory ground to support the order for termination of parental rights," we decline to address respondent mother's alternate arguments regarding marijuana use. *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012).

C. RESPONDENT FATHER

MCL 712A.19b(3)(g) provides for termination when: "The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

The origin of these proceedings is a domestic dispute wherein respondent father physically assaulted respondent mother. The minors were in the home. Moreover, the house was in a deplorable condition. There was animal fecal matter on the floor, trash and possessions strewn throughout the house, and roaches crawling on the wall in the children's room. The trial court did not err in finding that respondent father failed to provide proper care or custody of the minors. MCL 712A.19b(3)(g).

Nor did the trial court err in finding no reasonable likelihood that respondent father would be able to provide proper care and custody within a reasonable time considering the children's ages. MCL 712A.19b(3)(g). The trial court found that while the domestic violence issue seemed to be resolved, respondent father appeared proud and remorseless. A foster care supervisor testified about suspicions that, contrary to respondents' representations and the trial court's no contact order, they were in contact with each other, continued their relationship, and planned to marry. Respondent father refused substance abuse treatment, denied his need for such treatment, and used marijuana after his medical marijuana license expired. He also failed to show attentiveness during visitation, and declined to participate in unsupervised visitation after he broke up with his girlfriend. In light of the foregoing, we find no error in the trial court's finding. MCL 712A.19b(3)(g).

Because "[i]t is only necessary for the DHS to establish by clear and convincing evidence the existence of one statutory ground to support the order for termination of parental rights," we decline to address the alternate statutory grounds. *In re Frey*, 297 Mich App at 244.

III. BEST INTERESTS

A. STANDARD OF REVIEW

Both respondents challenge the trial court's best interest analysis. We review for clear error a trial court's decision regarding a child's best interests. *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation marks, citations, and brackets omitted).

B. ANALYSIS

When discerning the best interest of a child, the trial court may consider the child's bond to the parent, the parent's parenting ability, the advantages of a foster home over the parent's

home, and the child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 41-42; 832 NW2d 144 (2012). "[O]nce a statutory ground is established, a parent's interest in the care and custody of his or her child yields to the state's interest in the protection of the child." *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009).

The trial court did not err in its best interest finding regarding respondent mother. The trial court observed that the case had been pending for more than a year, but respondent mother had not made sufficient progress. The court took note of the severe domestic violence the children were subjected to while living with respondents, which was in contrast to the stable and permanent foster home in which the children now resided. The court also concluded that respondent mother did not have a strong bond with the older child, and no testimony evidenced a bond with the younger child. As the foster care supervisor explained, there were concerns regarding the older child's reluctance to visit with respondent mother, and respondent mother's inappropriate behavior during visitations such as playing with one child to make the other jealous. We find no clear error in the trial court's findings.[3]

We also reject respondent father's best interest argument. Respondent father made little progress toward rectifying conditions that were barriers to reunification. He was either unwilling or unable to rectify his drug dependency. During visitation, respondent father displayed limited interest in or interaction with the children, and often let them wander from the room. The court noted the severe domestic violence that occurred in the home, and that respondent father's retelling of the incident—and lack of remorse—was "disturbing." After more than a year and a half of these proceedings, respondent father remained unprepared to care for the children in his home. The trial court did not clearly err in finding that the children's needs would be better served through the permanency of adoption. *In re Olive/Metts*, 297 Mich App at 41-42.

IV. CONCLUSION

We find no errors in the adjudication, statutory grounds analysis, or best interest analysis that warrant reversal. We affirm.

/s/ Michael J. Riordan
/s/ Jane M. Beckering
/s/ Mark T. Boonstra

[3] Although respondent mother contends that the trial court erred in failing to make specific findings regarding the younger child, a trial court is required to make individual findings only "if the best interests of the individual children *significantly* differ[.]" *In re White*, 303 Mich App 701, 715-716; 846 NW2d 61 (2014) (emphasis in original). Here, the trial court did not err in failing "to explicitly make individual and . . . redundant factual findings concerning each child's best interests." *Id.*